

200727023



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

*Uniform Issue List: 408.03-00*

APR 12 2007

**Legend:**

Financial Institution A =

Savings Account A =

CD A =

CD B =

Amount A =

Amount B =

Amount C =

Amount D =

Amount E =

Amount F =

IRA X =

Page 2

Dear :

This is in response to your request dated in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated supplemented the request.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

You are years old and represent that you received a distribution from an individual retirement account "(IRA X)" totaling Amount A. You assert that your failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to miscommunication and misunderstanding with Financial Institution A which led to Amount B being placed into a non-IRA account.

In March, 2005, the certificate of deposit ("CD") in which IRA X was invested was due to mature. At approximately the same time, you were due to receive funds from your mother's estate. You were advised by an employee of Financial Institution A that you could combine funds from IRA X with the inherited funds to purchase a Jumbo CD and receive a more favorable rate of return than IRA X was yielding. You maintain that you were not aware of the tax consequences of moving funds from IRA X to a non-IRA CD.

Acting upon this advice, on you withdrew the entire amount, Amount A, from IRA X. Of this amount, Amount B was deposited into Savings Account A, a non-IRA account. The balance of IRA X, Amount C, was disbursed to you.

Upon receipt of the funds from your mother's estate, you withdrew Amount D from Savings Account A. Amount D was combined with Amount E, which consisted of inherited and personal funds, to purchase CD A. CD A was subsequently moved to CD B where it remains to date.

The balance of the amount disbursed from the IRA X, Amount F, remains in Savings Account A.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount B contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2)

inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

You have not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-26 affected your inability to timely roll over Amount A or any portion thereof, to an IRA. You have stated that the funds were combined with other non-IRA funds to purchase CD A for the purpose of earning a higher return. There is no evidence to suggest that you were unaware that the transaction was not a rollover or that you intended to rollover Amount A into another IRA. On the contrary, the fact that you co-mingled Amount B with non-IRA funds in order to purchase a high-yielding CD is indicative of an intent not to rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount B from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

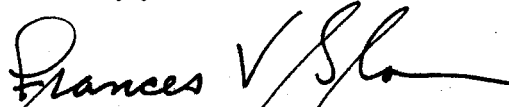
In accordance with a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

200727023

Page 5

If you wish to inquire about this ruling, please contact ( ) at Please  
address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frances V. Sloan".

Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: